

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.644 OF 2005
IN
CRIMINAL APPLICATION NO.4663 OF 2004

Shri Palesh Bherulal Jain & Anr. ...Applicants

Versus

Shri Nareshchandra M.Rathod & Ors. ...Respondents

.....

Mr.A.H.H.Ponda for Applicants.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent No.6.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 10, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Application takes exception to the order passed by the Metropolitan Magistrate's 28th Court, Esplanade, Mumbai dated December 14, 2004 in case No.55/PW/04 below Exhibit 1. The order impugned in this Application is sequel to the

direction given by this Court in order dated November 23, 2004 in Criminal Application No.4663 of 2004.

3. The limited grievance that needs to be considered in the present Application is that the concerned Magistrate has passed the impugned order without exploring the possibility of keeping the articles in question in the safe available with the Sessions Court, Mumbai, as is required by 4th Paragraph of Rule 69 of the Criminal Manual.

4. On reading the order, there is substance in the grievance made that the concerned Magistrate has overlooked the said requirement of Rule 69. Accordingly, the Magistrate may examine that aspect afresh, and in case, it is found that there is no sufficient space to preserve the articles in the safe of the Nazir of the Sessions Court, Mumbai, then, the Magistrate may pass appropriate orders for production of the property, as may be warranted, in the interest of justice, keeping in mind the requirement of law in that behalf.

5. According to the Applicants, the Complainant is obliged to produce the property in Court before commencement of recording of evidence. That aspect will be considered by the Magistrate, in accordance with law.

6. Application disposed of accordingly.

A.M.KHANWILKAR, J.